Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
National Broadband Plan for Our Future	)	GN Docket No. 09-51
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, As Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future	)	GN Docket No. 09-137
Developing a Unified Intercarrier Compensation Regime	)	WC Docket No. 01-92
High Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF BROADVIEW NETWORKS, INC., CAVALIER TELEPHONE, AND XO COMMUNICATIONS, LLC

Broadview Networks, Inc., Cavalier Telephone, and XO Communications, LLC (hereinafter referred to as "Joint Commenters"), by their attorneys, hereby file their comments in response to the Public Notice issued by the Federal Communications Commission ("FCC" or

"Commission") in GN Docket Nos. 09-47, 09-51, and 09-137 on November 13, 2009[1] seeking comment on universal service and intercarrier compensation policy options "that would further the goal of making broadband universally available to all people of the United States."[2]

I. INTRODUCTION AND SUMMARY

The Joint Commenters commend the Commission on its decision to seek further input from consumers and service providers regarding the relationship between potential intercarrier compensation ("ICC") and universal service funding ("USF") reforms and the goal of making broadband universally available to all Americans. The Joint Commenters maintain, however, that reform of the current intercarrier compensation and high-cost universal service funding schemes is not a necessary element of the National Broadband Plan the Commission must present to Congress in February 2010. While the Joint Commenters generally agree that ICC and USF reform is needed, precisely what the reforms are and how they are implemented is critical. The revenue at issue is vitally important to most local exchange carriers ("LECs") and a material misstep in the reform plans could have disastrous consequences, including defeat of the congressional (and Commission) goal of universal broadband availability. Thus, the Joint Commenters urge the Commission to proceed cautiously. The Commission should not feel compelled to include comprehensive reform plans for either intercarrier compensation or universal service funding (or both) in its broadband report to Congress due in ten weeks.

Regardless whether the Commission chooses to include intercarrier compensation and universal service funding reforms in its National Broadband Plan or to address these issues

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1 *Comment Sought on the Role of the Universal Service Fund and Interarrier Compensation in the National Broadband Plan*, NBP Notice #19, DA 09-2419 (rel. Nov. 13, 2009) ("*NBP Notice #19*").

2 *NBP Notice #19*, at 1.

separately, reform should be structured in the manner described herein. Generally, the Commission should make targeted changes in the areas that clearly need fixing – and to phase them in at a reasonable pace – but refrain from adopting changes that would produce catastrophic rate shock or that would lock the industry into a long-term plan that may not be necessary or would not adequately take into account changes in technology and network architecture that are being developed and implemented today. During the phase-in of these discrete reforms, the Commission should conduct further proceedings to determine what, if any, additional actions are necessary. Adoption of the reforms suggested herein would afford service providers needed regulatory certainty and stability and would provide a sound foundation for their continued (and expended) deployment of broadband services.

With respect to intercarrier compensation, the Commission should require LECs over time to reduce their intrastate terminating switched access rates to interstate rate levels. Given the importance of switched access revenues to most LECs, this reform must be implemented on a reasonable phased-in basis. A four-year transition schedule would allow LECs to adjust their business plans appropriately. In addition, the Commission should immediately resolve the long-standing confusion and uncertainty regarding the regulatory treatment of IP-PSTN traffic by ruling that going-forward all IP-PSTN traffic is jurisdictionally interstate and IP-PSTN interexchange service providers will be billed switched access charges regardless of how such traffic is routed. The Commission should initiate a further proceeding aimed at establishing a uniform terminating rate for *all* traffic. In the interim, however, current TELRIC-based transport and termination rates should be maintained.

With respect to high-cost universal service funding, the Commission should modify and retain the current revenues-based USF contribution mechanism rather than abandon it in favor of a numbers-based, connections-based, or hybrid contribution methodology. The Commission should focus its attention on fixing the obvious problems with the current system rather than scrapping it in favor of an untried contribution mechanism that could well prove far more costly, difficult to administer, and subject to competitive abuse.

II. LECS SHOULD BE REQUIRED TO MOVE THEIR INTRASTATE TERMINATING SWITCHED ACCESS RATES TO INTERSTATE LEVELS OVER A FOUR-YEAR TRANSITION PERIOD

Under the current compensation system, carriers may be charged vastly different rates for terminating traffic depending upon whether the traffic is jurisdictionally intrastate or interstate even though there may be no significant differences in the costs of providing intrastate and interstate terminating access service. It is well documented that price differentials that bear little relation to underlying costs distort carriers' business incentives and create regulatory arbitrage opportunities. Indeed, an important element of most intercarrier compensation reform plans the Commission has considered over the past several years has been to eliminate these skewed regulatory arbitrage incentives by harmonizing intrastate and interstate terminating switched access rates.[3] The Joint Commenters recognize the appropriateness of unifying

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[3] *See, e.g., Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 8524 (2006); *Comment Sought on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, CC Docket No. 01-92, Public Notice, 22 FCC Rcd 3362 (2007); *High Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, *Numbering Resource Optimization*, CC Docket No. 99-200, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) ("*Chairman's Draft Proposal*").

intrastate and interstate access rates.[4] However, a gradual transition is essential to avoid unnecessary economic disruption.

Switched access charges are an extremely significant revenue source for most LECs. The Joint Commenters estimate that switched access today accounts for a high percentage of an average competitive LEC's Free Cash Flow ("FCF"). Not surprisingly, it was estimated that the intercarrier compensation reform plan proposed a year ago by then-Chairman Martin, which would have eliminated the gap between intrastate and interstate switched access rates over two years,[5] would have had catastrophic effects on LEC revenue streams. Describing the proposed plan as one that would create a "Cash Flow Death Spiral," Raymond James estimated that the average rural local exchange carrier ("RLEC"), mid-sized LEC, or CLEC would experience a 10% revenue decline and a 38% decline in FCF under Chairman Martin's plan.[6] The result, according to the report, would be "multiple contractions resulting in a significant decline in equity prices."[7] Clearly, a reasonable transition plan is needed to avoid the market disruptions and adverse affects on consumers and carriers of moving too quickly from the

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4 It is by no means certain that the Commission has the statutory authority to compel LECs to reduce their intrastate switched access rates to interstate access rate levels. Congress intended that the states have general authority over intrastate communications, including intrastate access services, a domain the Commission can legally step into only in the most limited circumstances. It is questionable whether the Commission has legitimate grounds to preempt the states' authority to establish intrastate access charges. The Joint Commenters suggest that it would be most appropriate for the Commission to request that a Federal-State Joint Board resolve the issue of how to close the gap between intrastate and interstate switched access rates.

5 Chairman Martin's proposal would have required LECs to eliminate the gap between their intrastate and interstate switched access rates over two years. They would have been required to reduce their intrastate switched access rates by 50% one year from adoption of the plan. One year later, they would have been required to reduce their intrastate switched access rates by the remaining 50% to close the gap completely. *Chairman's Draft Proposal*, at ¶¶ 192-193.

6 "Intercarrier Compensation Reform: Potential Impact from an FCC Order," Raymond James & Associates (Oct. 27, 2008) ("*Raymond James Report*").

7 *Id.*, at 3.

existing regime to unified intrastate and interstate switched access rates. Businesses can rewrite business plans, reform contracts, and restructure products to accommodate revenue shifts, but only if the changes are implemented over time.

The Joint Commenters respectfully urge the Commission to adopt a four-year 25 percent/year reduction schedule for unifying intrastate and interstate switched access rates. The first reduction would occur approximately one year from adoption of the plan. The specifics of the proposed schedule are provided below:

YEAR 1:	Jan. 1, 2011 – initial 25% reduction of the difference between intrastate and interstate terminating switched access rates effective Jan. 1, 2010.
YEAR 2:	Jan. 1, 2012 – 25% reduction of the difference between intrastate and interstate terminating switched access rates effective Jan. 1, 2010.
YEAR 3:	Jan. 1, 2013 – 25% reduction of the difference between intrastate and interstate terminating switched access rates effective Jan. 1, 2010.
YEAR 4:	Jan. 1, 2014 – final 25% reduction of the difference between intrastate and interstate terminating switched access rates effective Jan. 1, 2010.

Under this schedule, intrastate and interstate terminating switched access rates would be made uniform over a reasonable period of time – 4 years – but the revenue loss would be administered in a gradual and manageable fashion.[8]

Of course, affected LECs will need to recoup the resulting revenue losses. The Joint Commenters maintain that the Commission should refrain from adopting any mechanism to offset revenue decreases brought about by reductions in intrastate switched access rates required to meet interstate access rate levels. LECs should be required to recover these lost revenues elsewhere in their product mix. Should the Commission decide to adopt a "make whole"

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8 In comments filed a year ago, the Joint Commenters proposed a five-year implementation schedule. The Joint Commenters are now proposing a four-year phase-in in recognition of the fact that LECs have had a year to begin adjusting their business plans. *See* Comments of Broadview Networks, Inc., *et al.*, WC Docket Nos. 05-337, *et al.* (filed Nov. 26, 2008) ("*Broadview, et al. Comments*") , at 37-38.

recovery mechanism, however, that mechanism must be competitively-neutral. For example, the Commission should not treat incumbent LECs and competitive LECs differently by adopting a revenue recovery mechanism that is available only to some or all incumbent LECs.

III. ALL IP-PSTN TRAFFIC SHOULD BE CONSIDERED JURISDICTIONALLY INTERSTATE AND ASSESSED SWITCHED ACCESS CHARGES ON A PROSPECTIVE BASIS

IP-PSTN traffic is the "elephant in the room" on the topic of differential call termination rates. Some proponents of fundamental reform complain loudly that many VoIP providers complete interexchange IP-PSTN calls over local trunk groups at reciprocal compensation rates and thereby bypass the switched access charge system. VoIP providers, by contrast, maintain that they qualify as Enhanced Service Providers ("ESPs") and that the ESP Exemption from the application of switched access charges entitles them to terminate traffic at reciprocal compensation rates. To date, despite numerous opportunities, the Commission has failed to take any action to resolve this controversy. The continuing legal limbo has led to widespread confusion, business planning uncertainty, and a tremendous number of disputes and litigation. The time has come for the Commission to fix this costly and wasteful situation.

The Joint Commenters urge the Commission to rule that going-forward all IP-PSTN interexchange traffic will be treated as jurisdictionally interstate and that IP-PSTN interexchange service providers will be billed interstate switched access charges regardless of how such traffic is routed. The Commission should clarify that the practice of paying reciprocal compensation when non-local IP-PSTN traffic is routed over local trunk groups will no longer be appropriate under its rules and that switched access charges will apply whether service providers elect to route interexchange IP-PSTN traffic over switched access trunk groups or local facilities.[9] Importantly, the Commission should expressly state that this modification of its policy will apply only on a prospective basis in order to avoid needless litigation over VoIP service providers' practices during the lengthy period in which the Commission chose not to address the regulatory treatment of IP-PSTN traffic. This formulation furthers the Commission's oft-stated goal to treat all traffic consistently for compensation purposes and, at the same time, forestalls a new round of disputes and litigation.

IV. THE COMMISSION SHOULD CONDUCT A FURTHER PROCEEDING AIMED AT ESTABLISHING A UNIFORM TERMINATION RATE FOR ALL TRAFFIC

The Joint Commenters suggest that the actions summarized above – which would resolve significant existing arbitrage opportunities – be taken immediately. However, the Joint Commenters are mindful of – and do not oppose – the general consensus in favor establishing uniform terminating rates for all traffic in the future. Accordingly, the Joint Commenters suggest that the Commission initiate a Further Notice of Proposed Rulemaking ("FNPRM") to consider what longer-term reforms are required and the form they should take. In particular, consideration of the cost standard to be used in establishing a uniform terminating intercarrier compensation rate – which is both critically important and extraordinarily complex – should be referred to a further proceeding during which expert debate can occur.

The uniform termination rate ultimately adopted by the Commission should adhere to several fundamental principles designed to comply with statutory requirements, avoid unjustified market disruptions, and ensure competitive neutrality. First, the uniform termination rate established by the Commission must be cost-based. Congress was clear in adopting Section 251(b)(5) of the Telecommunications Act of 1996 ("Act") that the touchstone for establishing

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9 The Joint Commenters do not believe that a transition period is necessary to implement the Commission's determination to prospectively assess interstate switched access charges on IP-PSTN traffic.

rates for transport and termination is cost and that all LECs are entitled to charge the carrier that delivers traffic for termination rates that recover the just and reasonable costs of providing these services.[10] Undisputedly, the costs of terminating traffic are not zero. Thus, mandatory bill-and-keep arrangements are not statutorily permissible.[11] Second, the uniform termination rate must be prospective-only to avoid retroactive claims that could result in significant market disruptions. Finally, the uniform termination rate ultimately established by the Commission should be phased in over a reasonable period of time to allow service providers an appropriate opportunity to adjust their business plans.

The Joint Commenters suggest that while the Commission is conducting further proceedings to determine an appropriate uniform termination rate, the Commission should retain the current TELRIC methodology as applied by the state commissions to establish reciprocal compensation rates. Overall, the TELRIC standard has produced reasonable rates and opponents have failed to prove that their suggested alternatives are more rational from an economic perspective.[12] Whether or not any modifications to the TELRIC methodology are justified is a question that should be explored in the FNPRM.

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10 47 U.S.C. § 251(b)(5). The legal roadmap for establishing pricing for services provided under Section 251(b)(5) is found in Section 252(d). Congress specified therein that pricing for reciprocal compensation is "just and reasonable" only when the rates allow for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d). Thus, LECs have a statutory right to recover the costs incurred in terminating traffic for other carriers. It is equally clear that LECs have a right to recover those costs by charging the carrier that delivers traffic for termination. "Mutual" means "common to both parties ... each acting in return ... to the other", and "reciprocal is defined as "directed by each other towards the others ..." *See* Black's Law Dictionary, 7th Ed. Pp. 707, 1276.

11 Of course, the Act does not preclude individual LECs from voluntarily negotiating agreements that incorporate bill-and-keep arrangements. Section 252(d)(2)(B)(i) permits LECs to waive their rights to mutual recovery when they determine that there is an "offsetting of reciprocal obligations."

12 *See Broadview et al. Comments*, at 29-35. *See also* Reply Comments of Broadview Networks, Inc., *et al.*, WC Docket Nos. 05-337, *et al.* (filed Dec. 22, 2008).

V. THERE IS INSUFFICIENT BASIS TO SCRAP A REVENUES-BASED HIGH-COST UNIVERSAL SERVICE FUND CONTRIBUTION METHODOLOGY

No party has shown that the current revenues-based methodology is responsible for the problems that exist with the current high-cost USF contribution system nor has it been shown why the current contribution system is broken beyond repair and must be abandoned in favor of a numbers-based, connections-based, or hybrid contribution methodology. Indeed, the Joint Commenters suggest that the Commission should focus its attention on addressing any problems with the current system rather than scrapping it in favor of an untried contribution mechanism that could well prove far more costly, difficult to administer, and subject to competitive abuse.

The main criticism of the current contribution system is that the total assessable revenue base has declined in recent years while universal service disbursements grew over that same time period.[13] Declines in assessable contribution revenues combined with growth in universal service disbursements has increased the contribution factor applied to determine universal service contribution amounts from 5.6% for the fourth quarter of 2000 to 12.3% for the fourth quarter of 2009.[14] It is projected that the contribution percentage will continue to rise, reaching 14.2% for the first quarter of 2010.[15] Under the current system, contributions are assessed on telecommunications providers based on their interstate and international end-user

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13 The total assessable revenue base declined from approximately $79.0 billion in 2000 to approximately $74.5 billion in 2006 and universal service disbursements grew over that same time period from approximately $4.5 billion in 2000 to over $6.6 billion in 2006. *See* FCC, Universal Service Monitoring Report, at Table 1.2a (2001); 2007 Universal Service Monitoring Report, at Table 1.11. *See also* USAC 2007 Annual Report, at 3, 51.

14 *See Proposed Fourth Quarter 2000 Universal Service Contribution Factor*, Public Notice, DA 00-2065 (rel. Sept. 8, 2000); *Proposed Fourth Quarter 2009 Universal Service Contribution Factor*, Public Notice, DA 09-2042 (rel. Sept. 14, 2009).

15 *Memorandum Re Legislative Hearing on a Discussion Draft of the Universal Service Reform Act of 2009*, Committee on Energy and Commerce, U.S. House of Representatives (Nov. 13, 2009), at 2.

telecommunications revenues, and end-user telecommunications revenues are becoming increasingly difficult to identify (and police) as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services. Integrated, single-price local and long-distance wireline service packages, mobile wireless calling plans that provide customers with buckets of nationwide minutes without incurring roaming or long-distance charges, and increased use of interconnected VoIP services all complicate the distinctions that serve as the basis for current contribution obligations.

The current method of assessing contribution levels based only on interstate and international end-user telecommunications revenues provides service providers with a powerful incentive to minimize their universal service contribution responsibilities by downplaying their amount of revenue in the interstate end-user telecommunications category. Since, for example, a wireline or wireless telecommunications carrier can avoid contributing to universal service based on the portion of bundled local/long-distance service package revenues it identifies as intrastate, its incentive is to maximize that number. Likewise, since a service provider is not obligated to contribute based on its non-telecommunications interconnected VoIP service revenues, its natural inclination is to maximize the amount of revenue it allocates to the non-telecommunications category.

The Joint Commenters suggest that there is a straightforward way to address this problem that does not require scrapping the revenues-based contribution methodology. The Commission can – and should – broaden the scope of revenues on which contribution obligations are assessed. All information service revenues (including all broadband service provider revenues) should be included for contribution purposes. Indeed, it is illogical to consider expanding the distribution system to include broadband services unless broadband services are included within the scope of services on which contribution obligations are assessed. In addition, the contribution base should be expanded to include all intrastate revenues. The latter suggested change may require congressional action to specify that the Commission has the authority to assess contributions based on intrastate revenues. The recently proposed Universal Service Reform Act of 2009 would provide the Commission with the option to assess contributions based on revenues derived from a communications service provider's provision of intrastate, interstate and foreign communications services.[16] The Joint Commenters urge the Commission to work with Congress to expeditiously enact this provision or similar language.

Should the Commission nevertheless decide that the current revenue-based contribution system should be replaced, it should publish the details of any contribution proposal it is considering and provide the public with a meaningful opportunity to review and comment on the proposal. The current record does not provide a sufficient basis for the Commission to make any changes to the contribution methodology at this time. Ideally, the Commission should issue a comprehensive FNPRM to receive comment not only on the specific details of its proposed plan but also on the basic question of whether that plan is preferable to an amended revenues-based contribution system.

VI. THE COMMISSION SHOULD NOT ADOPT A NUMBERS-BASED USF CONTRIBUTION METHODOLOGY

Any consideration of whether to abandon a modified revenues-based USF contribution methodology in favor of a numbers-based contribution mechanism must take into account several material shortcomings of any numbers-based contribution plan. Most fundamentally, a numbers-based contribution plan is not forward-looking. While a numbers-based contribution scheme initially might provide a "fix" for the current situation by expanding

16 Draft Universal Service Reform Act of 2009, Section 102.

the contribution base, that fix would be short-lived. Alternatives to traditional numbering are rising in use as advances in communications technology continue to occur and it is to be expected that a system that bases a service provider's USF contribution level on its numbering usage will spur service providers to increase or accelerate their deployment of alternatives that do not utilize numbers in the traditional manner. As this occurs, the contribution base will decline, leading to the same problem being experienced today with the revenues-based system.

Moreover, it is by no means clear that a numbers-based system would provide even a temporary "fix" for the current problem of a reduced contribution base. A numbers-based contribution system by definition would not capture certain types of telecommunications services or usage. For example, a numbers-based system would not capture the actual usage of big pipes nor would it capture services that today do not utilize numbers. In addition, numerous parties no doubt will seek exemptions from the numbers-based contribution methodology. To the extent the Commission grants exceptions to a particular provider or category of users, the contribution base would decline, thereby increasing the contribution obligations on providers that are not exempted from contributing. Simply put, the more exemptions granted by the Commission the smaller the contribution base.

Importantly, a numbers-based contribution mechanism would not eliminate service providers' incentive or ability to engage in activities to minimize their contribution levels. Under a numbers-based contribution program, service providers would be rewarded for avoiding or hiding the use of numbers. These activities would be extremely difficult, if not impossible, for regulators to identify and police.

A numbers-based contribution system also would disproportionately burden low-volume users, *i.e.*, consumers who make few or no calls. The replacement of the current "pay for what you use" system with a per-number assessment mechanism could present those users with significantly increased monthly costs. In many cases, those users are low income and elderly consumers for whom any increased costs may represent a significant burden.[17] Of course, should the Commission consider exempting those users from a numbers-based contribution system, it must take into account the potentially-significant additional contribution burdens doing so would place on other contributors.

In addition, a numbers-based approach raises serious questions regarding the limits on the Commission's permissive authority under Section 254(d) to adopt an across-the-board numbers-based contribution mechanism.[18] Under the Act, the Commission has the authority to require contributions from providers of "interstate telecommunications services."[19] The Commission may also require "[a]ny other provider of interstate telecommunications" to contribute to universal service, but only to the extent that the "public interest so requires."[20] Before the Commission can require contributions from these "other providers of interstate telecommunications," however, the agency must make a three-part finding that: (a) the "provider furnishes or supplies components of a service"; (b) the provider provides "telecommunications" that are interstate in nature; and (c) the public interest requires contributions by these providers to the federal universal service fund.[21]

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17 *See, e.g.,* Letter from Maureen A. Thompson, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 27, 2006), at 1.

18 47 U.S.C. § 254(d).

19 *Id.*

20 *Id.* (emphasis added); *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7538 (2006) ("*Interconnected VoIP USF Order*").

21 *Id.*, at 7538-40.

Without undertaking this analysis, it is impossible to determine whether "the public interest requires contributions by these providers to the federal universal service fund" as required by Section 254(d).[22] Simply stating that every user of a telephone number enjoys the capability of interconnection to the PSTN to their benefit is insufficient to satisfy the statutory standard for permissive authority under Section 254(d). The Commission can make the required findings only on a service-by-service or application-by-application basis.

Moreover, before adopting a pure numbers-based (or hybrid) contribution methodology, the Commission must address concerns that it may lack statutory authority to impose a contribution obligation for numbers associated with purely intrastate services. Even in situations where a service supports bother interstate and intrastate communications using the same number, a flat-rate contribution mechanism may represent an impermissible and disproportionate assessment on intrastate services.

VII. THE COMMISSION SHOULD REJECT ALL HYBRID CONTRIBUTION METHODOLOGIES

Hybrid numbers/revenues and numbers/connections contribution methodologies contain several material flaws that compel their rejection. Importantly, rather than provide a simpler, more cost-effective means of assessing contributions from service providers, hybrid contribution mechanisms are inherently more complex and expensive to administer than the current revenues-based contribution system. Any hybrid mechanism would create and require contributors to respect complex and essentially arbitrary distinctions of residential/wireless versus business customers, entities covered by Section 254 of the Act versus entities not covered by Section 254, North American Numbering Plan ("NANP") numbers versus NANP number-

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22 *Id.*

equivalents, and number (or number-equivalent)-based services versus non-number based services.

For example, a numbers/revenues hybrid system would require service providers to maintain current revenue tracking systems while adopting new tracking mechanisms to ascertain whether a number is assigned to a residential or business customer, to report numbering usage for universal service funding purposes, and to modify billing, accounting practices, and information technology resources to calculate and recover contributions based upon the type of end user. Similarly, a hybrid numbers/connections contribution mechanism would require service providers, at a minimum, to develop the ability to track whether a number is assigned to a residential or business customer, to track and report numbering usage and the speed of the connection that provides service to a customer, and to modify billing, accounting practices, and information technology resources to calculate and recover contributions based upon the type of end user. A fundamental problem is that services today typically are not defined on the basis of connections.

Because of their complexity and ambiguity, hybrid proposals increase implementation, tracking, and compliance burdens on service providers considerably and make compliance audits by regulatory authorities much more difficult and expensive to conduct. Service providers (and auditors) would be required to build and train to two new systems. Hybrid contribution systems also create additional opportunities for arbitrage as service providers seek ways to minimize their contribution and compliance responsibilities. These detriments far outweigh any benefits hybrid systems ostensibly offer and would make the contribution mechanism less stable and predictable than the current revenues-based system.

Hybrid contribution approaches also suffer from some of the same material defects of a pure numbers-based contribution methodology. To the extent the hybrid scheme includes a numbers-based component, it too is not forward-looking and does not reflect the increasing use of alternatives to traditional numbering. It would not capture certain types of telecommunications services or usage (*e.g.*, services that do not utilize numbers). Moreover, it too raises serious questions regarding the limits on the Commission's permissive authority under Section 254(d) to adopt a numbers-based contribution scheme.

In sum, the Joint Commenters urge the Commission to reject all numbers/connections and numbers/revenues hybrid contribution mechanism proposals in favor of a modified revenues-based contribution methodology.[23]

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23 The Joint Commenters refrain from commenting on a pure connections-based approach to USF contributions as the record contains insufficient detail on how such a mechanism would operate to permit substantive analysis and comment. Should the Commission decide to pursue a connections-based approach, it should issue an FNPRM in which the specifics of such a plan are described and permit parties a reasonable opportunity to analyze and respond on the record to the proposal.

VIII. **CONCLUSION**

For all of the foregoing reasons, the Joint Commenters urge the Commission to adopt the recommendations contained in these comments.

Respectfully submitted,

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